

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

CURTIS BOYKINS,

Plaintiff,

v.

CITY OF CINCINNATI,

Defendant.

Case No. 1:14-cv-836

Black, J.
Bowman, M.J.

REPORT AND RECOMMENDATION

I. Background

On October 28, 2014, Plaintiff was granted leave to file a *pro se* complaint against his former employer, the City of Cincinnati, alleging that the Defendant discriminated against him based upon his race and gender, and took retaliatory action against based upon his protected activity. On November 25, 2014, the City of Cincinnati filed a motion to dismiss Plaintiff's complaint for failure to state a claim, on grounds that the complaint failed to "allege members outside the protected class were treated any differently." (Doc. 7). Plaintiff did not directly respond to Defendant's motion, but instead filed an Amended Complaint on December 12, 2014.

II. Analysis

Pursuant to Federal Rule of Procedure 15(a)(2), Plaintiff was not permitted to amend his complaint absent the Defendant's written consent or the express leave of this Court. A litigant's *pro se* status does not excuse him from complying with all applicable

rules of civil procedure and/or Orders of this Court. Here, Plaintiff's amended complaint appears to have been filed in violation of Rule 15(a)(2). On the other hand, the Defendant has failed to object to the filing, and leave to amend is freely given when justice so requires.

Having examined the amended complaint, the undersigned finds that Plaintiff's breach of Rule 15(a)(2) should be forgiven in this instance. Had Plaintiff filed an appropriate motion, the undersigned would have granted him leave to file the amended complaint. The amended complaint clearly addresses the infirmities that Defendant identified in the original complaint, rendering moot the pending motion to dismiss.

III. Conclusion and Recommendation

Accordingly, **IT IS RECOMMENDED THAT** Defendant's motion to dismiss (Doc. 7) be **DENIED AS MOOT**, and that the Defendant be directed to file its answer or response to the amended complaint forthwith.

s/Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report and Recommendation (“R&R”) within **FOURTEEN (14) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **FOURTEEN (14) DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

s/Stephanie K. Bowman
Stephanie K. Bowman
United States Magistrate Judge